

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2406

Introduced by Assembly Member Buchanan

February 24, 2012

An act to amend Section ~~1861.05~~ *1861.10* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, as amended, Buchanan. Insurance: rates.

Existing law, the Insurance Rate Reduction and Reform Act (enacted by Proposition 103, as approved by the voters at the November 8, 1988, statewide general election), prohibits a rate from being approved or remaining in effect which is excessive, inadequate, unfairly discriminatory, or otherwise in violation of the applicable provisions of law. *Under existing law, an insurer who wishes to change a rate is required to file a complete rate application with the Insurance Commissioner, for which there may be a hearing as prescribed. Existing law authorizes any person to initiate or intervene in any proceeding permitted or established pursuant to these provisions, to challenge actions of the commissioner, and to enforce provisions of the act.*

~~This bill would make technical, nonsubstantive changes to those provisions.~~

This bill would require the Department of Insurance to post on its Internet Web site, during the period of eligibility, all requests for a finding of eligibility to seek compensation and all findings of eligibility, as defined.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1861.10 of the Insurance Code is amended*
2 *to read:*

3 1861.10. Consumer Participation. (a) Any person may initiate
4 or intervene in ~~any a~~ proceeding permitted or established pursuant
5 to this chapter, challenge ~~an any~~ action of the commissioner under
6 this article, and enforce ~~any a~~ provision of this article.

7 (b) The commissioner or a court shall award reasonable
8 advocacy and witness fees and expenses to ~~any a~~ person who
9 demonstrates that (1) the person represents the interests of
10 consumers; and, (2) that he or she has made a substantial
11 contribution to the adoption of ~~any an~~ order, regulation, or decision
12 by the commissioner or a court. Where ~~such that~~ advocacy occurs
13 in response to a rate application, the award shall be paid by the
14 applicant.

15 (c) (1) The commissioner shall require every insurer to enclose
16 notices in every policy or renewal premium bill informing
17 policyholders of the opportunity to join an ~~independant, non-profit~~
18 *independent, nonprofit* corporation ~~which that~~ shall advocate the
19 interests of insurance consumers in any forum. This organization
20 shall be established by an interim board of public members
21 designated by the commissioner and operated by individuals who
22 are democratically elected from its membership. The corporation
23 shall proportionately reimburse insurers for ~~any~~ additional costs
24 incurred by insertion of the enclosure, except no postage shall be
25 charged for ~~any an~~ enclosure weighing less than 1/3 of an ounce.
26 (2) The commissioner shall, by regulation, determine the content
27 of the enclosures and other procedures necessary for
28 implementation of this provision. ~~The legislature~~ *Legislature* shall
29 make no appropriation for this subdivision.

30 (d) *All requests for a finding of eligibility to seek compensation*
31 *and all findings of eligibility, as described in Section 2662.2 of*
32 *Title 10 of the California Code of Regulations, shall be published*
33 *on the Department of Insurance Internet Web site during the*
34 *eligibility period.*

35 ~~SECTION 1. Section 1861.05 of the Insurance Code is~~
36 ~~amended to read:~~

37 ~~1861.05. Approval of Insurance Rates. (a) A rate shall not~~
38 ~~be approved or remain in effect that is excessive, inadequate,~~

1 ~~unfairly discriminatory, or otherwise in violation of this chapter.~~
2 ~~In considering whether a rate is excessive, inadequate, or unfairly~~
3 ~~discriminatory, consideration shall not be given to the degree of~~
4 ~~competition, and the commissioner shall consider whether the rate~~
5 ~~mathematically reflects the insurance company's investment~~
6 ~~income.~~

7 ~~(b) Every insurer that desires to change any rate shall file a~~
8 ~~complete rate application with the commissioner. A complete rate~~
9 ~~application shall include all data referred to in Sections 1857.7,~~
10 ~~1857.9, and 1864 and other information as the commissioner may~~
11 ~~require. The applicant shall have the burden of proving that the~~
12 ~~requested rate change is justified and meets the requirements of~~
13 ~~this article.~~

14 ~~(c) The commissioner shall notify the public of any application~~
15 ~~by an insurer for a rate change. The application shall be deemed~~
16 ~~approved 60 days after public notice unless (1) a consumer or his~~
17 ~~or her representative requests a hearing within 45 days of public~~
18 ~~notice and the commissioner grants the hearing, or determines not~~
19 ~~to grant the hearing and issues written findings in support of that~~
20 ~~decision, or (2) the commissioner on his or her own motion~~
21 ~~determines to hold a hearing, or (3) the proposed rate adjustment~~
22 ~~exceeds 7 percent of the then applicable rate for personal lines or~~
23 ~~15 percent for commercial lines, in which case the commissioner~~
24 ~~shall hold a hearing upon a timely request. In any event, a rate~~
25 ~~change application shall be deemed approved 180 days after the~~
26 ~~rate application is received by the commissioner (A) unless that~~
27 ~~application has been disapproved by a final order of the~~
28 ~~commissioner subsequent to a hearing, or (B) extraordinary~~
29 ~~circumstances exist. For purposes of this section, "received" means~~
30 ~~the date delivered to the department.~~

31 ~~(d) For purposes of this section, extraordinary circumstances~~
32 ~~include the following:~~

33 ~~(1) Rate change application hearings commenced during the~~
34 ~~180-day period provided by subdivision (c). If a hearing is~~
35 ~~commenced during the 180-day period, the rate change application~~
36 ~~shall be deemed approved upon expiration of the 180-day period~~
37 ~~or 60 days after the close of the record of the hearing, whichever~~
38 ~~is later, unless disapproved prior to that date.~~

39 ~~(2) Rate change applications that are not approved or~~
40 ~~disapproved within the 180-day period provided by subdivision~~

1 ~~(c) as a result of a judicial proceeding directly involving the~~
2 ~~application and initiated by the applicant or an intervenor. During~~
3 ~~the pendency of the judicial proceedings, the 180-day period is~~
4 ~~tolled, except that in no event shall the commissioner have less~~
5 ~~than 30 days after conclusion of the judicial proceedings to approve~~
6 ~~or disapprove the application. Notwithstanding any other provision~~
7 ~~of law, nothing shall preclude the commissioner from disapproving~~
8 ~~an application without a hearing if a stay is in effect barring the~~
9 ~~commissioner from holding a hearing within the 180-day period.~~
10 ~~(3) The hearing has been continued pursuant to Section 11524~~
11 ~~of the Government Code. The 180-day period provided by~~
12 ~~subdivision (c) shall be tolled during any period in which a hearing~~
13 ~~is continued pursuant to Section 11524 of the Government Code.~~
14 ~~A continuance pursuant to Section 11524 of the Government Code~~
15 ~~shall be decided on a case by case basis. If the hearing is~~
16 ~~commenced or continued during the 180-day period, the rate~~
17 ~~change application shall be deemed approved upon the expiration~~
18 ~~of the 180-day period or 100 days after the case is submitted,~~
19 ~~whichever is later, unless disapproved prior to that date.~~